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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,338	10/02/2000	Jeffrey P. Kubala	POU920000176US1	3544
7590	10/31/2005			<b>EXAMINER</b>
William A Kinnaman Jr IBM Corporation - MS P386 2455 South Rd Poughkeepsie, NY 12601			SHAH, NILESH R	
			ART UNIT	PAPER NUMBER
			2195	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/677,338	KUBALA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nilesh Shah	2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 08 August 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 4-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4-27 is/are rejected..
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 4-27 are presented for examination.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - a. A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 4-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al (6,438,704) (hereinafter Harris) in view of Beelitz (6,032,239).
4. As per claim 4, Harris teaches the invention substantially as claimed including a information handling system that specifying a maximum allowed consumption of said resources, a method of enforcing capacity limitations comprising the steps of: measuring an actual consumption (abstract; col. 4 lines 6-27); and comparing said actual consumption with said maximum allowed consumption to determine whether said actual consumption exceeds said maximum allowed consumption and if said actual consumption exceeds said maximum allowed consumption, reducing said actual consumption of said resources to said maximum allowed consumption (col. 4 lines 45-65; col. 8 lines 35- 65; col. 26 lines 32-67).

5. Harris does not teach the use of different partitions.

Beelitz teaches the use of having different partitions with different resources (col. 2 lines 56-65) for upgrading, adding, deleting or changing the partition or resources on an exiting hard drive (col. 3 lines 10-40).

6. It would have been obvious to one skilled in the art at the time of the invention to combine the teachings of Harris and Beelitz because Beelitz's system of having changeable partitions would improve the efficiency of Harris' system by eliminating the particular partition that has hit its permitted consumption before it bogs down the entire system.

7. As per claim 5, Harris, teaches the use of a information handling system that specifying a maximum allowed consumption of said resources (col. 4 lines 45-65; col. 8 lines 35- 65; col. 26 lines 32-67).

Beelitz teaches the use of having different partitions with different resources (col. 2 lines 56-65) for upgrading, adding, deleting or changing the partition or resources on an exiting hard drive (col. 3 lines 10-20).

8. As per claim 6, Beelitz teaches a method in which said group of logical partitions comprises all of the logical partitions on said physical machine (col. 2 lines 56-65, col. 4 lines 7-17).

9. As per claims 7 and 8, Beelitz teaches a method in which each of the logical partitions in said group is assigned different status such as a primary, first extended, seconded (table 1) or inactive active (col. 3 lines 1-6). The examiner takes official notice that the uses of weights within partitions are well known in the art.
10. As per claim 9, Beelitz teaches a method in which said specified system resources are processor resources (col. 2 lines 56-65).
11. As per claim 10, Harris teaches a method in which said actual consumption is determined as a rolling average of said consumption over a predetermined time interval (col. 4 lines 6-27).
12. As per claim 11, Beelitz teaches a program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine (col. 2 lines 33-40, col. 2 lines 56-65).
13. Claims 12-15 are rejected based on previous rejections for claims 4, 5, 7, and 8 respectfully.
14. As per claim 16, Harris teaches the use of a information handling system that specifying a maximum allowed consumption of said resources (abstract, col. 4 lines 4-27); measuring an actual consumption (col. 4 lines 4-27); and

comparing said actual consumption with said maximum allowed consumption to determine whether said actual consumption exceeds said maximum allowed consumption and if said actual average consumption exceeds said maximum average consumption, reducing said actual average consumption of said resources to said maximum average consumption by alternating operating said logical partition in a capped mode in which said logical partition is limited to said maximum capped consumption and in an uncapped mode in which said logical partition is not limited to said maximum capped consumption.

(col. 4 lines 45-65; col. 8 lines 35- 65; col. 26 lines 32-67), and

Beelitz teaches the use of having different partitions with different resources (col. 2 lines 56-65) for upgrading, adding, deleting or changing the partition or resources on an exiting hard drive (col. 3 lines 10-20).

15. Claims 17-19 are rejected based on the same rejection for claims 5, 7, and 8 above
16. Claim 20 is rejected based on the same rejected as claim 11 above.
17. Claims 21-24 are rejected based on the same rejection for claims 16-19 above.
18. Claim 25 is rejected based on the same rejected as claim 16 above.
19. Claim 26 is rejected based on the same rejected as claim 11 above.
20. Claim 27 is rejected based on the same rejected as claim 16 above.

#### *Response to Arguments*

21. Applicant's arguments filed 8/8/05 have been fully considered but they are not persuasive.

22. In remarks applicant argues that Beelitz does not teach the use of a physical machine comprising one or more logical partitions, each of which is allocated a defined portion of machine resources and has one or more software applications executing.
23. Examiner respectfully disagrees with applicant's remarks. Beelitz clearly teaches the use of physical machine comprising one or more logical partitions, each of which is allocated a defined portion of machine resources and has one or more software applications executing (col. 2 lines 55-67; col. 3 lines 15-30). Beelitz states the first and second logical partitions can run one or more pieces of software.

***Conclusion***

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

25. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Nilesh Shah whose telephone number is (571)272-3771.

The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng An can be reached on (571)272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nilesh Shah  
Examiner  
Art Unit 2195

NS  
October 25, 2005

